JD–28–07
Dubuque, IA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE FINLEY HOSPITAL

Cases 33-CA-14942
33-CA-15132
and 33-CA-15192
33-CA-15193

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 199

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for the Respondent.
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DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. The complaints stem from unfair labor practice (ULP) charges that Service Employees International Union, Local 199 (the Union) filed against The Finley Hospital (Respondent or the hospital), alleging violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).[1]

Pursuant to notice, I conducted a trial in Galena, Illinois, on March 6 and 7, 2007, at which the parties had full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

The General Counsel and Respondent filed helpful posthearing briefs that I have duly considered.

Issues

I. Did Respondent, in violation of Section 8(a)(5) and (1) of the Act, make a unilateral change in working conditions without having afforded the Union notice and an opportunity to bargain when, upon expiration of the 2005-2006 collective-bargaining agreement, it ceased giving nurses 3 percent raises on their anniversary dates as provided in said agreement? Or, as Respondent contends, did the contractual language privilege Respondent to discontinue raises when the agreement expired?

[1] At my request, the General Council prepared a stipulation of complaint allegations integrating the various complaints, GC Exh. 2.

Related to this, did Respondent violate Section 8(a)(1) by telling nurses that they would no longer get 3 percent raises upon expiration of the agreement? Did Respondent further violate Section 8(a)(1) by telling nurses that, after expiration of the agreement, no subsequently negotiated raises would be made retroactive?

2. Did Respondent, in violation of Section 8(a)(5) and (1), condition reaching agreement on the terms of a successor contract on the Union's withdrawal of ULP charges and grievances? Or, as Respondent defends, did it lawfully submit a package proposal that included a permissive subject of bargaining?

3. Did Respondent, in violation of Section 8(a)(5) and (1), fail and refuse to provide the Union with relevant and necessary information it requested concerning the hospital's Unit Operations Councils (UOC's)? Or, as Respondent argues, was the hospital's obligation excused because the information was available to the Union through other means, including union steward participation in the councils, as well as binders and bulletin boards maintained in various nursing departments?

4. Did Respondent, in violation of Section 8(a)(5) and (1), fail and refuse to provide the Union with relevant and necessary information it requested concerning nurses who called out sick during a mumps outbreak in 2006, and who replaced them? Or, as Respondent contends, was the information in fact provided?

5. Did Respondent, in violation of Section 8(a)(5) and (1), fail and refuse to bargain an accommodation when it asserted confidentiality in refusing to disclose the names and contact information of patients' family members and of coworkers who had complained about Charge Nurse Gina Gross, in response to the Union's request for such in connection with Gross' termination grievance? Or, as Respondent defends, was it released from any such obligation because the information was known or available to the Union through other means; or, alternatively, should the matter have been deferred to arbitration?

During the course of these proceedings, Respondent raised certain arguments that I will not address in my decision. First, Respondent has condemned as unconstitutional and violative of due process the Board's policies that do not require the General Counsel to disclose to a respondent prior to trial evidence in the government's possession. This is not a matter over which I have jurisdiction. Second, Respondent has asserted that the Union engaged in certain bad faith conduct, including making its requests for the UOC's and sick-out records for improper purposes. However, Respondent never filed any ULP charges against the Union, and my attempting to adjudicate any such unlitigated contentions here would be wholly inappropriate.

Finally, I reject Respondent's contention that the undisputed fact that it did furnish the Union with a myriad of documents in response to various information requests serves as a valid defense to its failure to provide the information at issue before me. Respondent has correctly stated the law that, in determining whether an employer must furnish requested information, all of the circumstances must be considered. However, the test is not a quantitative one of how many information requests were fulfilled vis-à-vis how many were not, but whether Respondent failed and refused to furnish information that was relevant and necessary for the Union to represent the employees who have chosen it to represent them. For example, if 20 unit employees were discharged, and pursuant to a union's information request, an employer provided full and complete information as to 19 of them but not the 20th, the failure and refusal to provide information pertaining to the 20th employee would nevertheless violate the Act. The ratio could be 50 to 1, or 100 to 1, but the 1 employee would still be potentially adversely

affected. In sum, any failures of Respondent to provide relevant and necessary information were not cured by its compliance with the law as to other requests.

Witnesses and Credibility

Witness titles are given as of the time period relevant to this proceeding.

The General Counsel's witnesses included Anne Gentil-Archer and Bradley Van Waus, both full-time union organizers and representatives; and Linda Mefeld, a part-time RN at the hospital, who is also union chapter president and a part-time paid union representative.

Respondent's witnesses included Lynn McDermott, director of nursing of skilled and acute rehabilitation units; Kathy Ripple, vice-president of nursing; Karla Waldbillig, human resources director; and Sabra Rosener, attorney for Iowa Health Systems (IHS), a multi-employer association with which the hospital is affiliated.

Most salient facts are undisputed, and there were few conflicts in witness testimony. Therefore, my conclusions in this case do not depend on credibility resolution.

Facts

Based on the entire record, including the pleadings, testimony of witnesses and my observations of their demeanor, documents, and stipulations of the parties, I find the facts as follows.

Respondent, a corporation with offices and places of business in Dubuque, Cascade, and Elkader, Iowa, engages in the operation of an acute-care hospital. Jurisdiction has been admitted, and I so find. Respondent is a senior affiliate of IHS, a multi-hospital organization headquartered in Des Moines, Iowa, which provides various services to its members, including assistance in negotiating labor agreements.

On December 22, 2003, the Union was certified as the exclusive collective-bargaining representative of Respondent's full-time and regular part-time nurses, including PRN nurses and charge nurses, employed at the three locations above. The main hospital facility is in Dubuque. The unit has approximately 300 employees.

Following lengthy negotiations, the parties on June 20, 2005, reached agreement on a collective-bargaining agreement, effective from that date through June 20, 2006.[2] Negotiations on a successor contract began on March 28, 2006, but no new agreement was reached, and the 2005-2006 agreement expired by its terms as of June 21, 2006. Negotiations continued thereafter, but there is still no new contract. Management's negotiators in 2006 included chief spokesperson Sarah Votroubek and Rosener from IHS, Ripple, and Waldbillig. The Union's negotiators included chief spokesperson Matthew Glasson, Merfeld, and Van Waus, as well as a bargaining team of 8 – 11 nurses.

Discontinuance of Pay Raises after Expiration of 2005-2006 Agreement

Article 20.3 of the agreement pertained to "Base Rate Increases During Term of Agreement." It stated, in relevant part:

[2] GC Exh. 4.

> For the duration of this Agreement, the Hospital will adjust the pay of Nurses on his/her anniversary date. Such pay increases for Nurses not on probation, during the term of this Agreement will be three (3) percent. If a Nurse's base rate is at the top of the range for his/her position, and the Nurse is not on probation, such Nurse will receive a lump sum payment of three (3) percent of his/her current base rate . . . .

The parties stipulated to Respondent's practice of paying nurses raises during the calendar years between January 1, 1996, and June 20, 2005, as follows.[3] Nurses were given annual 3 percent pay increases, unless they were at or near the top of their scale. Those at the top of the scale received a lump sum payment of 2, 3, or 4 percent of their salaries, depending on their years of service. Some nurses who were at near the top of their range received a combination of a percent increase in their wage and a lump sum payment, totaling 3 percent. Raises could be withheld for poor performance.

The date of receiving the raise was usually the employee's performance review date, which in many (but not all) instances was the employee's anniversary date or date of hire. For some nurses, the difference between anniversary and review dates was as much as 11 months because of leave from work that did not earn seniority. Further, some employees received increases in 6-month increments.

At negotiations that culminated in the 2005-2006 agreement, the parties had no discussion about what would happen to the pay raises if there was no new agreement at the time the contract expired.

By letter dated June 21, 2006, John Knox, chair of the hospital's board of directors, advised employees that because the contract had expired on June 20, without a new agreement replacing it, Article 20.3 expired, and "we will be unable to provide increases to nurses whose anniversary date falls after the date of contract expiration (June 20th) until a new contract is reached."[4] The Union received a copy of this letter from employees but never directly from Respondent.

At a negotiations session held on July 17, 2006, Ripple stated there would be no further raises until a new contract was signed and that the hospital would not accept the Union's proposal for retroactive pay to June 21, 2006. Management reiterated the position that pay raises would not be made retroactive at October 2006 "Open Forum" meetings.[5] Such meetings are regularly conducted with all staff, not only nurses, on a voluntary basis and concern various issues of interest to employees.

Respondent, in fact, discontinued giving such pay raises for nurses whose anniversary dates fell after June 20, 2006. At no time prior did Respondent give the Union notice of the decision to stop paying raises or afford it an opportunity to bargain thereover.

[3] See Jt. Exh. 1, modified by oral stipulations during the hearing.
[4] GC Exh. 14.
[5] See GC Exh. 15, a summary published by Respondent.

Conditioning Proposals on Withdrawal of ULP Charges and Grievances

Management made a "final" contract proposal on June 20, 2006.[6] However, on June 29, at the first bargaining session after the expiration of the 2005-2006 contract, Respondent's negotiators presented the Union with a contract proposal entitled "Finley's Proposal to Union in an Attempt to Avoid a Strike—Proposal Contingent Upon John Knox's Discussion with the Finley Board of Directors."[7]

Rosener stated that the proposal went beyond the scope of the authority of management's negotiators and had to be approved by the board, a procedure that would take a day or two. She asked the Union to delay the strike/ratification vote (on Respondent's June 20 proposal) that was scheduled for the following day. Glasson replied that this was not an offer that could be taken to the membership and that the Union would proceed with the scheduled vote.

The next day, the membership voted to reject the June 20 management offer and instead to strike. By letter dated July 3, Rosener advised Glasson that, in essence, the Finley Executive Committee had discussed and approved the June 29 management proposal.[8]

She went to make other proposals "in an attempt to avoid a strike." Thus, Respondent offered to remove, at the Union's request, language in its modified proposal giving all nurses, whether dues paying or not, the right to vote to vote on whether to ratify or reject the hospital's contract proposals. Respondent would also agree to remove language in its modified contract proposal entitling the hospital to reimbursement from the Union for costs paid to a nurse-contracting agency after notice of a strike had been given by the Union and the strike was called off.

Further, the hospital would agree to include Article 29A Drug Testing in the modified contract proposal only with the condition that the Union agree to withdraw a ULP charge relating to drug testing. In addition, the hospital would remove language it had added to Article 33 Whistleblower that committed the Union not to intimidate nurses, only if the Union withdrew several ULP charges and a grievance related to the conduct of nurses engaged in union activity.

Finally, she stated that the modified contract proposal was offered "with the condition" that the Union withdraw two ULP charges (including 33–CA–15132) and four grievances related to the terms or negotiation of contract language. This was the first time that Respondent had conditioned its proposals on withdrawal of ULP charges or grievances. Nothing in the July 3 letter indicated that its terms constituted a final offer, or that its rejection by the union membership would result in an impasse.

A strike took place from July 6–8. The parties met again for negotiations on July 17. Waldbillig's testimony was that at such meeting, Glasson stated that the Union would not be opposed to including withdrawal of ULP charges and grievances in connection with settlement. Van Waus, on the other hand, testified that Glasson told the hospital negotiators that the Union would not accept a contract contingent upon removal of ULP charges and grievances

[6] All dates in this section occurred in 2006.

[7] GC Exh. 17.

[8] GC Exh. 18. The executive committee consisted of some of the members of the board of directors.

Rosener corroborated Waldbillig's testimony to the extent that she testified that following her July 3 letter, Glasson indicated a willingness to discuss withdrawal of ULP charges as part of negotiations. She further testified that the Union did not later expressly state that it was unwilling to do so but shortly afterward filed ULP charges on the matter.

Waldbillig's notes of the July 17 session state: "Including ULP's and grievances in settling, the union is not opposed and may be useful per Matt. ULP's regarding bargaining would be mute[sic]. Others the union may not withdraw. May not want to withdraw all grievances either. For example on call and call back grievance and disciplinary matters."[9] These notes and Rosener's and Waldbillig's testimony were not necessarily inconsistent with Van Waus' testimony. Neither Rosener nor Waldbillig testified that Glasson said that the Union would entertain withdrawing all charges and grievances. Based on testimony and Waldbillig's notes, I find that Glasson stated at the meeting that the Union was open to discussing withdrawal of certain ULP charges and grievances but not others.

Following the Union's filing of ULP charges on the basis of the July 3 letter, Respondent did not renew its demand that the Union withdraw any ULP charges or grievances as a quid pro quo for an agreement. Such demand was not contained in management's next proposal, presented on August 17.

Information Requests — Unit Operations Councils (UOC's) and Work-related Illness

Prior to negotiation of the 2005-2006 agreement, Respondent had UOC's in place, and the Union has never played any role in their operations. The hospital's larger units have UOC's, but some of the smaller ones use their staff meetings to serve UOC functions. According to Ripple, the UOC's are designed to get staff together and to focus on issues in a unit, with focus on day-to-day operations, quality, and safety. Each UOC has a recorder, who either types up the minutes her or himself or gives them to the ward secretary for typing. The minutes are then either posted on the unit bulletin board or placed in binders kept at the unit that are accessible to all employees.[10] The parties stipulated that some worksite leaders (stewards) have been members of UOC's on some units; that R. Exh. 19, minutes of the Peri-op unit UOC's December 12, 2005 meeting, represents an example of the format in which minutes are normally taken; and that RN Vonda Wall, who recorded the minutes contained in R. Exh. 19, was a worksite leader at the time.

There are about 20 worksite leaders, with not all units having one. Ripple testified that the hospital affords worksite leaders exactly the same access to information contained on bulletin boards and in binders as any other employees; no more, no less. She conceded that worksite leaders normally would not go to areas where they do not work. Nothing in the record suggests that Respondent ever offered to allow worksite leaders to look for information on the UOC's on their worktime or authorized them to go to units other than where they worked for that purpose.

Article 3 of the 2005-2006 agreement created a joint labor-management Collaborative Nursing Council, "to promote the professional practice of nursing care" at the hospital. Comprised of 13 members (6 staff nurses appointed by the Union, 6 management

[9] GC Exh. 22 at 1.

[10] Illustrations of the bulletin boards and binders in various units are contained in R. Exh. 18.

representatives, and the vice president of patient care services), it was to meet at least every other month.

In 2006, an outbreak of mumps occurred in the Dubuque area, and certain nurses at the hospital contacted the disease.

By letter dated April 26, 2006, to Waldbillig, Van Waus requested various kinds of information "In preparation for our next collective bargaining session."[11] Included were the following:

1) A list of the members of each units operational[sic] council, a description of the function of the councils, a list of the issues discussed by each council and the resolutions of the council, all minutes of each units operational council meetings since June 20, 2005, and the methodology used in selecting members of each units council.

2) List each nurse who has called out sick due to a work related illness or exposure, the date of the call out, the unit, the reason stated, and whether or not the nurse was replaced.

Van Waus testified that he requested the information about the UOC's because he had received information from unit employees that the UOC's were discussing staffing issues that could replace nurses with technical employees, and changing hours of work, including the possibility of implementing rotating shifts. His concern was that this could undermine the status of the Union as the exclusive-bargaining representative, as well as infringe on the functions of the contractually-established Collaborative Nursing Council. He further testified that he wished the information about nurses who had called out sick due to a work-related illness or exposure, because nurses had told him that the hospital had replaced nurses who were out with the mumps with non-nurses. They further reported to him that the hospital had not been paying workers compensation correctly under state law but had forced them to use their paid time off under the contract before such compensation benefits kicked in. At no time did Van Waus explain, orally or in writing, why he wanted information about the UOC's, and at no time did Respondent request such an explanation.

Waldbillig replied by letter dated May 2,[12] stating that with regard to the above two items, as well as two other requests not germane here, "[W]e do not see these issues as relevant to any issue that is being negotiated for a new contract or relevant to enforcement of the current collective bargaining agreement and will not be providing any information response to these requests." In addition, she accused Van Waus of attempting to harass her with voluminous information requests for information not relevant to the representation of bargaining unit employees, and threatened that if he continued to so, the hospital would file ULP charges against the Union. As noted earlier, Respondent never in fact filed any.

Neither Waldbillig nor anyone else from management ever told Van Waus where he could find minutes of the UOC's, which Respondent never provided to the Union. As a union representative, he was limited to the cafeteria, as any member of the public, and he did not have access to areas in the units where patient information was maintained.

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[11] GC Exh. 11. All dates hereinafter in this section occurred in 2006 unless otherwise indicated.

[12] GC Exh. 12.

By letter dated January 12, 2007, Waldbillg advised Van Waus that Respondent had learned from the Regional Office that his April 26 information request had sought information about nurses who were absent from work due to contracting the mumps, which had not been clear from his request.[13] She enclosed copies of OSHA Form 300 logs for the year 2006, which listed nurses who had called off work due to workplace illness or injury and described the reasons, including "mumps disease."[14]

At no time did the hospital furnish Van Waus with information regarding the positions of those who filled in for nurses who called out ill because of the mumps.

Information Request Pertaining to Gina Gross' Termination

At the outset, I note that the issue here is a limited one: as clarified by the General Counsel at hearing, it is solely whether Respondent violated the Act by failing and refusing to bargain an accommodation with the Union when it invoked the confidentiality defense as a ground for not disclosing the names and contact information of patients' family members and coworkers who had complained about Gross.

Charge Nurse Gross was terminated on June 22, 2005, for "Behavior which disrupts a fellow employee(s) performance of their duties and creates dissatisfaction of care for a patient and/or their family members and friends."[15]

The termination notice she was given that day listed six dates of occurrences: April 4, May 28, June 1, June 7, June 11, and June 14. It went on to provide details of five incidents, without specifying the names of the complainants or the dates. The first two started with "From a patient's family:" and the remaining three began with "Co-worker."

Present at the termination interview, in addition to Gross, were Gross' supervisor, Lynn McDermott, Waldbillig, and union worksite leader (steward) Vonda Wall.

The parties stipulated that Gross testified at the step 5 grievance hearing (described subsequently) that at the time of her termination, she was aware of the identity of one of the patients' family members because she knew her outside of work and was acquainted with her. I also credit Waldbillig's testimony that at the termination interview, Gross stated that she was aware of the identify of one of the three coworkers whose complaint was described.

The parties further stipulated that at the step 5 hearing, Gross testified as follows. She was made aware of the two patients' family members' complaints listed in her termination notice shortly after they were received by the hospital; she was aware of the identity of the patients at

[13] GC Exh. 13.

[14] Respondent had provided the OSHA logs for 2004 and 2005, pursuant to para. 8 (e) of the Union's January 6, 2006 information request (R. Exh. 1-A at 2), seeking reports and logs on work-related accidents and illnesses for the last 2 years. Further, in response to para. 7(b) of that request, asking for copies of patient care policies affecting nurses for each department, Respondent had included certain information concerning the 3 Medical Unit's UOC. See R. Exh. 12 at 4–5. Waldbillig testified this information would have applied to other units with UOC's, but this was never related to the Union.

[15] See GC Exh. 5, notice of termination. All dates hereinafter in this section occurred in 2005 unless otherwise indicated.

those times; following her discharge, she was provided a copy of the investigation file from the Union (which the Union received in early August) and was able to determine their identities based in part upon those same complaints; and she did not at any time tell the Union whom she thought they were because she did not want to violate the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[16]

By letter to Waldbillig dated July 7, Gentil-Archer requested various types of information in order to prepare for a grievance on the termination.[17] Pertinent here, the request included the names and contact information of all patients' family members and of all coworkers cited in the disciplinary notice. Gentil-Archer testified that she wanted this information because the Union wished to conduct first-hand interviews with family members and coworkers to make certain that what was stated in the termination notice was accurate.

The Union filed a grievance as per Article 5 of the contract, which Gross signed on July 12, contending that the termination violated Articles 6.1 and 6.2 of the agreement.[18] The former provided that discipline shall be for "just cause," defined as "a reason that is not arbitrary or discriminatory."

By letter dated July 13, Waldbillg responded to the July 7 information request.[19] She agreed to provide certain information that had been requested: sanitized information on nurses who had been terminated over the past 3 years and the reasons therefore, sanitized copies of disciplinary notices that had been given to nurses over the past 3 years for disruptive behavior or similar conduct, Gross' personnel file, and the dates and places of the occurrences cited in the termination notice. However, she stated that the hospital would not provide the names of patients or their family members "as we view that information as confidential;" further, the names of coworkers would not be provided because they had specifically requested to remain anonymous. Waldbillig pointed out that if the matter went to step 4 of the grievance procedure, it might be necessary for the hospital to reveal their names. After receipt of this letter, Gentil-Archer called Waldbillig and reiterated her request for patients' family members' names.

Either with this letter or thereafter, Respondent, by both fax and letter, provided Gentil-Archer with Gross' investigation file, which included redacted hospital reports of patients' family members' complaints (not written by the family members themselves) and coworker complaint forms. With cover letter dated July 19, Waldbillig furnished the information she had agreed to provide in her July 13 letter, with the possible exception of Gross' personnel file, which Waldbillig said she understood had already been obtained.[20] In any event, it is undisputed that the personnel file was provided to the Union.

Before the step 3 grievance meeting on August 8, the Union received from the Iowa Work Force Development (IWFD), a state agency, a copy of what the hospital had submitted to it in connection with Gross' unemployment compensation claim.[21] Included therein was the following:

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[16] In general, with certain exceptions not germane here, the statute prohibits disclosure of the names of patients who register complaints about their health care treatment.

[17] GC Exh. 6.

[18] GC Exh. 7.

[19] GC Exh. 8.

[20] R. Exh. 3. The parties stipulated this document did not name any coworkers.

[21] R. Exh. 4. The fax cover page reflects that the hospital faxed the documents to the agency on August 1. Respondent did not directly furnish them to the Union.

A memorandum dated May 4 by McDermott, detailing complaints against Gross by a patient's wife that day (p. 70);

A customer satisfaction form filled out by McDermott, detailing complaints against Gross by a patient's daughter and son, received on April 4 (p.71);

A memorandum dated May 5 by McDermott, describing a meeting she had with Gross that day, apparently about the above April 4 complaint (p. 72);

A customer satisfaction form filled out by Ripple, detailing complaints against Gross from a patient's wife and son, received on June14 (p. 73);

A customer satisfaction form filled out by McDermott, detailing complaints against Gross from a patient's son, received on June 13 (p. 74).

A memorandum dated May 30 by McDermott, describing her meeting with Gross about an incident with a co-worker the previous weekend (p. 76).

In each of the three customer satisfaction forms, a phone number was shown in the box next to the box for the person(s) making the report, who were not named. Gentile-Archer testified that because she did not know whose phone numbers were listed, she did not dial them. Rather, she called Waldbillig. Referring to her request for the names of the patients' family members and of coworkers, she mentioned that some of the information had not been redacted. Waldbillig responded that she had not noticed this.

Waldbillig testified that the phone numbers were provided to IWFD with no intention that they be disclosed to the Union. However, she also testified that when an employer sends information to that agency, such information is forwarded to the other party. In any event, based on Respondent's consistent position throughout, that those phone numbers were not meant to appear and that Respondent's disclosure of the identity of the patients' family members would have violated HIPAA, I find that it did not intentionally provide such information to the Union.

According to Waldbillig, at the step 3 grievance hearing on August 8, Gentile-Archer said that she was going to call the phone numbers listed on the investigative reports of patient complaints and conduct her own investigation. In contrast, the parties stipulated, in lieu of calling Gentile-Archer back on rebuttal, that she would testify that at no time did she tell Respondent she was going to call the phone numbers of patients' family members that had been disclosed to the Union. Waldbillig's notes of the meeting do not support a conclusion that Gentile-Archer made such a statement. Thus, they say that Gentile-Archer "wants copies of the information with names included. She wants to complete her own investigation. She has filed an unfair labor practice on this."[22] They reflect nothing about her stating that she would make any telephone calls. In any event, for reasons to be discussed, my conclusions do not depend on which version is credited.

Because the grievance was unresolved at steps 2 through 4, it was scheduled for a 5th and final step hearing before a retired state court judge who, according to Article 5.10, would render a decision limited to whether or not the hospital's interpretation of the agreement and its disciplinary decision were "arbitrary or discriminatory." The judge would either uphold the

[22] GC Exh. 21 at 0023.

termination or order Gross reinstated. Although this is technically not arbitration per se, the parties have referred to it as such, and the difference is immaterial for purposes of my decision.

By letter dated September 27 to Gentil-Archer, Rosener referred to several discussions through the Regional Office regarding possible non-Board settlement.[23] She stated that the hospital had agreed not to call the patients' family members as witnesses in the arbitration case and was prepared to disclose the names of employees who had witnessed Gross' abuse of a patient. However, inasmuch as the Union was insisting that the hospital disclose the names of patients' family members, the parties were at an impasse, and the hospital was therefore implementing its final offer by providing the names of coworkers "who witnessed Gina Gross' abuse of a patient." She later named four individuals, again describing them as coworkers who witnessed patient abuse. Rosener mentioned nothing in the letter about the coworkers who complained about Gross' conduct vis-à-vis themselves and, in the absence of record evidence, I will not find that they were the same coworkers who witnessed Gross abusing patients.

Of the four named coworkers, the Union had contact information for only one (who was in the bargaining unit). Another had left the hospital, and the remaining two were nursing assistants who were not in the unit. In its defense, the hospital contends that in each unit, a scheduling book is maintained for the employees assigned to the floor. It includes employees' contact information (home telephone numbers) and is accessible to all employees.

The Union never agreed to withdraw its request for patients' family members' names and contact information if Respondent agreed not to call them at the step 5 hearing. According to Gentil-Archer, even had Gross been able to determine what patients were involved, the Union would have violated HIPAA by asking her for the names of their family members.

The step 5 hearing was held on May 22 and June 12, 2006, before Judge L. D. Lybbert, Because of a miscommunication, the first day's proceeding was not transcribed. The parties stipulated that at the hearing, Respondent continued to rely on complaints by patients' family members and coworkers in support of its decision to terminate Gross. In his decision, issued on July 26, 2006, Judge Lybbert upheld the termination as not arbitrary or discriminatory.[24] Whether or not the patients' family members testified, he clearly considered most, if not all, of the incidents referenced in the termination letter. Thus, he noted, on p. 2:

> McDermott received a flurry of complaints about Gross's interpersonal relationships from co-workers, as well as patients and their families during the last few weeks prior to her dismissal. One patient and his family were so upset with Gross's behavior and attitude that they transferred the patient to another hospital and threatened to sue her and the Hospital.

Analysis and Conclusions

Discontinuance of Pay Raises after Expiration of 2005-2006 Agreement

As a general rule, an employer may not make unilateral changes when the parties are engaged in negotiations for a new agreement and there has been no overall impasse, absent a showing that a union has engaged in delay tactics, or that the employer has economic exigencies. *Pleasantview Nursing Home, Inc.*, 335 NLRB 961, 962 (2001); *Bottom Line*

[23] GC Exh. 9.
[24] GC Exh. 10.

Enterprises, 302 NLRB 373, 374 (1991). Respondent has not alleged the parties bargained to impasse; indeed, negotiations continued after the instant charges were filed. Nor has Respondent alleged economic exigencies or that the Union engaged in delaying tactics.

Rather, Respondent has relied on the contention that it was privileged to stop giving pay raises upon expiration of the contract because of its sound arguable interpretation of the language of Article 20.3 ("For the duration of this Agreement"). Respondent further argues that this language constituted a waiver by the Union.

Addressing first the waiver argument, an employer may lawfully make changes at the expiration of a contract if a union has waived the right to bargain over them. The employer contending this bears the high burden of demonstrating that the union has clearly and unequivocally relinquished such right. *Bath Iron Works Corp.*, 345 NLRB No. 33 at 4 (2005), enfd. 475 F.3d 14 (1s t Cir. 2007); *Intermountain Rural Electric Assn.*, 305 NLRB 783, 786 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993) ("A union must clearly intend, express, and manifest a conscious relinquishment"); *TCI of New York*, 301 NLRB 822, 824 (1991).

Respondent has failed to meet that burden. Contrary to Respondent, I do not conclude that the Union's agreement to the language "For the duration of this Agreement" ipso facto amounted to any kind of waiver of the Union's rights to later bargain over changes to the policy on raises. *Cauthorne Trucking*, 256 NLRB 721, 722 (1981), cited by Respondent, is distinguishable. There, the provision specifically stated that pension obligations would terminate at contract expiration unless they were continued in a new agreement. Moreover, nothing in the negotiations leading to the 2005-2006 agreement supports the waiver argument. Thus, no discussions took place during those negotiations about what would happen to raises when the contract expired, if no successor agreement had been negotiated.

I also reject Respondent's contention that its arguable construction of contractual language gave it the right to stop providing pay raises. In situations such as this, where the collective-bargaining agreement has expired, and there has been no clear waiver by the Union, any matters of private contractual interpretation between the parties should be superseded by the statutory protection of employees' Section 7 rights, as held by the Board in *AlliedSignal Aerospace*, 330 NLRB 1216 (2000), enf. denied sub nom 253 F.3d 119 (D.C. Cir. 2001) governs.[25] There, the Board determined that an employer's cessation of paying severance benefits after the expiration of the contract constituted a unilateral change in violation of Section 8(a)(5) and (1) of the Act. As the Board stated (at 1216):

> Whatever the scope of the Respondent's obligation as a matter of contract, there is no basis for finding that the Union waived its right to continuance of the status quo as to terms and conditions of employment after contract expiration. Indeed, there is absolutely no evidence that the Respondent and the Union, as negotiating partners [when the contract was negotiated] even considered the question of the Respondent's *statutory* obligation to maintain existing severance benefits after expiration of the agreement . . . . [italics in original]

Cf. *Transmontaigne, Inc.*, 337 NLRB 262 (2001) (successor employer's obligation to recognize union statutory, not contractual, in nature).

[25] The Board has not reversed its position since enforcement was denied, and I am unaware of any contrary Sixth Circuit Court of Appeals decisions.

Accepting Respondent's position would have the immediate natural effect of causing unit employees to believe that they have been effectively punished for supporting the Union, since they have been deprived of the raises they received not only during the term of the contract but for many years before then. This, in turn, would result in discouraging them from engaging in union support or activity, an outcome inconsistent with the purposes of the Act. As the Board aptly articulated in *Intermountain Rural Electric Assn.*, supra at 789, regarding an employer's making changes in pay calculations that adversely affected employees:

> [T]hese were . . . areas in which the entire bargaining unit was affected adversely in the most fundamental way—their paychecks. These actions would likely place the Union at a serious disadvantage in terms of maintaining the support and trust of the employees. This would serve to undercut the Union's authority at the bargaining table. (Partially quoted in *Dynatron/Bondo Corp.*, 333 NLRB 750, 753 at fn. 8 (2001).

I therefore conclude that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing raises without first having afforded the Union notice and an opportunity to bargain. Ergo, I further conclude that Respondent violated Section 8(a)(1) by announcing to employees that they would no longer get raises upon expiration of the agreement and by stating that it would not give the raises—that it unlawfully discontinued paying on June 21, 2006—retroactively to June 21, 2006.

Conditioning Reaching Agreement in Bargaining on Withdrawal of ULP Charges and Grievances

A party may bargain to impasse over a mandatory subject of bargaining, concerning "wages, hours, and other terms and conditions of employment," but not over a nonmandatory (or permissive) one. *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); *Success Village Apartments, Inc.*, 347 NLRB No. 100 at 5 (2006); *Detroit Newspaper Agency*, 327 NLRB 799, 800 (1999). Withdrawal of ULP charges is considered a nonmandatory subject of bargaining. *Hilton's Environmental, Inc.*, 320 NLRB 437, 455 (1995); *Magic Chef, Inc.*, 288 NLRB 2, 15 (1988); *Laredo Packing Co.*, 254 NLRB 1, 30 (1981). The same holds true for the withdrawal of pending grievances. *Good GMC, Inc.*, 267 NLRB 583 (1983).

As a corollary, a party may not insist on a nonmandatory subject of bargaining as a condition precedent to entering into any collective-bargaining agreement, because this amounts to a refusal to bargain about the subjects that are within the scope of mandatory bargaining. *Wooster Division of Borg-Warner Corp.*, supra at 349; *Detroit Newspaper Agency,* supra at 800; *Union Carbide Corp.*, 165 NLRB 254 (1967), enfd. sub nom. 405 F.2d 1111 (DC Cir. 1968). Distinguishable are situations where a party merely presents, and even repeats, a demand for a nonmandatory subject, without positing it as an ultimatum. *Detroit Newspaper Agency*, ibid. See also *Taft Broadcasting*, 274 NLRB 260, 261 (1985). An employer may do so until a union unequivocally rejects acceptance of inclusion of such in an agreement.

The alleged violations relate to statements in Rosener's letter of July 3, 2006, conditioning modified proposals on certain matters on the Union's withdrawal of related ULP's and grievances, and stating in regard to Respondent's June 29 proposal, that "Finley offers the modified contract proposal with the condition that the Union will withdraw [listed ULP charges and grievances]."

Nothing in the letter expressly stated or otherwise indicated it was a final offer. Significantly, the June 29 proposal superseded a prior hospital offer that had been termed "final." In these circumstances, the Union could not reasonably have inferred that the July 3 proposal was the hospital's last offer, the Union's rejection of which would result in impasse. Indeed, after the Union rejected the July 3 proposal, stating that it would not agree to withdraw ULP charges and grievances, the parties met again for negotiations, and Respondent dropped its demand that the Union withdraw them. In view of all of these factors, I cannot conclude that Respondent insisted that the Union withdraw ULP charges and grievances as a quid pro quo for reaching any agreement, either as to particular provisions or on a contract as a whole, or that Respondent indicated that impasse would result if the Union would not agree thereto.

In sum, Respondent lawfully presented a demand for a nonmandatory subject but did not put it forward as an ultimatum that would result in the success or failure of negotiations on a new contract. See *Detroit Newspaper Agency*, supra at 800. Accordingly, I recommend that this allegation be dismissed.

Information Concerning the Unit Operations Councils (UOC's) and Nurses' Sick-Out Records

An employer is obliged to supply information requested by a collective-bargaining representative that is relevant and necessary to the latter's performance of its responsibilities to the employees it represents. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956).

Although an employer need not automatically comply with a union's information request, with its duty to provide such turning on the circumstances of the particular case, *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979), requested information that relates directly to the terms and conditions of represented employees is presumptively relevant. *Beverly Health & Rehabilitation Services, Inc.*, 328 NLRB 885, 888 (1999); *Samaritan Medical Center,* 319 NLRB 392, 397 (1995). The Board applies a liberal, discovery-type standard in determining what requests for information must be honored. *Raley's Supermarket*, 349 NLRB No. 7 at 3 (2007); *U.S. Postal Service.*, 337 NLRB 820, 822 (2002); *Brazos Electric Power Co-op*, 241 NLRB 1016, 1018 (1979). Thus, the requested information need only be potentially relevant to the issues for which it is sought. *Pennsylvania Power Co.*, 301 NLRB 1104, 1104–1105 (1991); *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

I conclude that information pertaining to the UOC's was presumptively relevant, inasmuch as the UOC's are designed to bring staff together and have as their focus day-to-day operations, quality, and safety—matters that directly concern nurses' working conditions. Moreover, the existence of the joint labor-management council established by the collective-bargaining agreement raised the possibility of overlap or conflict in functions between it and the UOC's. Similarly, information relating to the health and safety of nurses was also presumptively relevant.

Although Van Waus did not articulate reasons why he wanted information about the UOC's or the sick-out records, the Union was not required to make a specific showing of relevance unless Respondent had rebutted the presumption of such. See *Southern California Gas Co.*, 346 NLRB No. 45 at 1 (2006); *Mathews Readymix, Inc.*, 324 NLRB 1005, 1009

(1997), enfd. In relevant part, 165 F.3d 74 (D.C. Cir. 1999); *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd., 531 F.2d 1381 (6th Cir. 1976). Further, to the extent that Respondent felt that the requests were ambiguous or overbroad, it had the obligation to request clarification and/or comply with them to the extent that they encompassed necessary and relevant information. See *Mission Foods*, 345 NLRB No. 49 at 2 – 3 (2005); *National Steel Corp.*, 335 NLRB 747, 748 (2001); *Keauhou Beach Hotel*, 298 NLRB 702 (1990).

Respondent asserts that it had no obligation to provide the Union with information concerning the UOC's, including minutes of their meetings, because some worksite leaders have been members of some UOC's, and the information was otherwise available to the Union through its worksite leaders. This argument does not pass muster, because the existence of alternative means for a union to obtain requested information normally fails as a justification for an employer's refusal to furnish it. See *River Oak Center for Children, Inc.*, 345 NLRB No. 113 at 2 (2005); *King Soppers, Inc.*, 344 NLRB No. 104 at 2 (2005); *Kroger Co.*, 226 NLRB 512, 513 (1976). The Sixth Circuit Court of Appeals has expressly approved of this proposition. See *ASARCO, Inc. v. NLRB*, 805 F.2d 194, 198 (6th Cir. 1986). As the Board articulated in *Kroger Co.* (at 513):

> Absent special circumstances, a union's right to information is not defeated merely because the union may acquire the needed information through an independent course of investigation. The union is under no obligation to utilize a burdensome procedure of obtaining desired information where the employer may have such information available in a more convenient form. The union is entitled to an accurate and authoritative statement of facts which only the employer is in a position to make. (footnotes omitted)

In this regard, Respondent's theory would place an untenable burden on worksite leaders who, in the absence of a contrary suggestion by Respondent, would be required to try to amass the information on their own time by looking through binders and on bulletin board postings, in some cases, in units where they do not work. Respondent cannot shake off its statutory responsibility in such a manner.

Other than furnishing partial information on one unit, Respondent did not provide the information requested about the UOC's, and its failure and refusal to do so violated Section 8(a)(5) and (1) of the Act.

As to the information requests concerning work-related illness, Respondent had already provided the Union with the 2004 and 2005 OSHA logs in response to another information request, and it was not required to re-provide them. See *Wackenhut Corp.*, 345 NLRB No. 53 (2005); *King Soopers, Inc.*, supra at 5 fn. 6.

The 2006 OSHA logs were furnished in January 2007, after discussions with the Regional Office as to why the Union wanted them (in connection with nurses absent from work due to contracting the mumps). However, as noted earlier, it was incumbent upon Respondent to seek further clarification from the Union at the time the April 2006 information request was made, if it had questions about the relevancy or scope of the request. Respondent failed to do so. An employer has a duty to furnish information in a timely fashion. *Beverly California Corp.*, 326 NLRB 153, 157 (1991); I*nterstate Food Processing*, 283 NLRB 303, 306 (1987). Belated compliance does not cure an unlawful refusal. *Ironworkers Local 86*, 308 NLRB 173 at fn. 2 (1992); *Interstate Food Processing*, ibid. Accordingly, the 2006 OSHA logs were untimely provided. Respondent has never provided the Union with the information it sought regarding what employees replaced nurses who were off work due to the mumps, as the request was later narrowed.

In sum, I conclude that by not providing the 2006 OSHA logs in a timely fashion and by not providing information about who replaced nurses off from work due to the mumps in 2006, Respondent violated Section 8(a)(5) and (1) of the Act.

Refusal to Disclose Names and Contact Information of Patients' Family Members and Coworkers Who Complained about Gross

When a party refuses to supply requested information on the grounds of confidentiality, it then bears the burden of coming forward with an offer of accommodation that will meet the needs of both parties. *National Steel Corp.*, supra at 748; *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004); *Pennsylvania Power*, supra at 1105–1106 (1991). The burden was thus on Respondent, not the Union, to suggest alternatives. It is irrelevant that Gross and the Union might have been able to ascertain the identities of the complainants and find ways to contact them, since Respondent's invocation of confidentiality as a basis for not supplying such information is not at issue. I also reject Respondent's argument that deferral to arbitration was the appropriate method to determine the accommodation, because the Board has a longstanding policy of refusing to defer information disputes. *Team Clean, Inc.*, 348 NLRB No. 86 at fn. 1 (2005); *Shaw's Supermarkets* 339 NLRB 871 (2003).

Respondent responded to the July 7, 2005 request that included the above information by letter of July 13, 2005, stating that it was confidential and would not be furnished. Respondent made no efforts to offer an accommodation prior to the Union's filing of a charge on the matter on July 28, 2005. The next question is whether Respondent's later actions amounted to attempts at accommodation, even though not so entitled. As to the information that Respondent provided to the IWFD, this was not directly provided to the Union, and it is undisputed that any unredacted phone numbers were not meant for the Union. Accordingly, I do not conclude that this constituted any kind of effort at accommodation.

The key issue is whether any proposals Respondent made in post-charge settlement discussions referenced in Rosener's September 27, 2005 letter should be deemed offers of accommodation. The letter reflects that Respondent had made proposals, including not calling patients' family members as witnesses at the step 5 hearing, and disclosing the names of employees who had witnessed Gross' abuse of patients, but that the Union had insisted on disclosure of the patients' family members' names. Rosener stated that because there was an impasse, Respondent was implementing its final offer, and she went on to list those employees' names. As noted previously, there is nothing to indicate these discussions included the matter of coworkers who had complained about Gross' conduct vis-à-vis themselves.

As discussed above, information must be furnished in a timely fashion, with late compliance failing to negate an earlier unlawful refusal. When it comes to bargaining an accommodation, the situation is different to the extent that a union will not be receiving information in the form in which it was requested. There is no assurance that an employer's offers to provide alternatives will be accepted or that the parties will reach agreement on the scope of information to be furnished, since the law does not require an employer to successfully bargain an accommodation with a union, only to make bona fide efforts to achieve such.

Three considerations, taken together, cause me to conclude that Respondent's post-charge offers of accommodation satisfied its obligations under the Act. First, they stemmed

from settlement efforts. The Regional Office appropriately attempted to facilitate pre-trial resolution of the charge by discussions with the parties, during which Respondent made certain proposals. Inasmuch as Respondent apparently made good-faith efforts to reach settlement, it is entitled to some benefit from that. I cite the Board's longstanding policy of encouraging settlement of labor disputes. See *Wallace Corp. v. NLRB*, 323 U.S. 248, 253-254 (1944); *Doubletree Guest Suites Santa Monica,* 347 NLRB No. 72 at 4 (2006).

Second, Respondent offered proposals as an accommodation well in advance of the scheduled arbitration hearing. Thus, the proposals were made prior to September 27, 2005, approximately 8 months before the first day of the step 5 hearing on May 22, 2006. I cannot see how the Union was prejudiced by not having received the proposals earlier, especially when no agreement was reached on an accommodation.

Third, although though the proposals were received after the charge was filed and months after the original request for them was made, the Board encourages resolution of disputes "short of arbitration hearings, briefs, and decisions so that the arbitration system is not 'woefully overburden.'" *Pennsylvania Power Co.*, supra at 1104–1105; quoted in *Raley's Supermarket*, supra at 2. Post-charge conduct that serves that end should be fostered.

In view of all these considerations combined, I conclude that Respondent satisfied its obligations under the Act with regard to bargaining an accommodation on patients' family members' names and contract information, and recommend dismissal of that aspect of the complaint.

In contrast, Respondent never provided the Union with the names and contact information of the coworkers who complained about Gross' conduct vis-à-vis themselves, and the record does not reflect any efforts by Respondent to bargain an accommodation as to them. Respondent merely provided redacted coworker complaint forms. Accordingly, I conclude that Respondent violated Section 8(a)(5) and (1) with regard to this aspect of the Union's information request, by not suggesting alternatives that would have accommodated both the undisputed confidentiality concerns of coworkers, and the needs of the Union to represent Gross in her termination grievance.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(5) and (1) of the Act:

(a) Unilaterally discontinued paying raises after June 20, 2006, without first having afforded the Union notice and an opportunity to bargain.

(b) Failed and refused to provide the Union with information the Union had requested about Respondent's Unit Operations Councils.

(c) Failed and refused to timely provide, or to provide at all, to the Union, information the Union had requested about nurses who were out sick with the mumps.

(d) Failed and refused to offer to bargain an accommodation when it invoked confidentiality as a basis for not providing the Union with the names and contact information of coworkers whose complaints had been a basis for the termination of a nurse and for a union grievance on the termination.

4. By the following conduct, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section (1) of the Act:

(a) Told employees that Respondent would discontinue paying raises after June 20, 2006, when the Union had not been afforded notice and an opportunity to bargain.

(b) Told employees that Respondent would not give pay raises—that it unlawfully discontinued paying on June 21, 2006—retroactively to June 21, 2006.

Remedy

Because Respondent has engaged in unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Since Respondent unilaterally withheld pay raises after June 20, 2006, Respondent shall also be ordered to rescind this unlawful change and to pay to all bargaining unit employees the pay raises which would have been payable beginning June 21, 2006, as prescribed in *Ogle Protective Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), until such time as the parties negotiate a new pay provision or reach a bona fide impasse. I will further order that Respondent restore the status quo ante with respect to raises.

Inasmuch as Gross' grievance has been finally decided, Respondent's refusal and failure to bargain an accommodation regarding the names and contact information of coworkers who complained against her is moot as a practical matter. I therefore deem it unnecessary to order as an affirmative action that Respondent bargain such an accommodation. See *Borgess Medical Center*, supra at 1106.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[26]

ORDER

Respondent, The Finley Hospital, Dubque, Cascade, and Elklander, Iowa, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally discontinuing paying raises or other employee benefits contained in the 2005-2006 collective-bargaining agreement, without first affording the Union notice and an opportunity to bargain.

[26] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Telling employees that Respondent will discontinue benefits contained in the 2005-2006 collective-bargaining agreement, when the Union has not been afforded notice and an opportunity to bargain.

(c) Telling employees that Respondent will not give pay raises—that it unlawfully discontinued paying on June 21, 2006—retroactively to June 21, 2006.

(d) Failing and refusing to timely provide the Union with information the Union requests that is relevant and necessary to its role as the collective-bargaining representative of employees.

(e) Failing and refusing to offer to bargain an accommodation when it invokes confidentiality as a basis for not providing the Union with the names and contact information of coworkers whose complaints have been a basis for the discipline of an employee.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights Section 7 of the Act guarantees to them.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the practice of giving employees raises as set out in Article 20.3 of the 2005-2006 collective-bargaining agreement and make employees whole for any losses sustained as a result of the unlawful change made on June 21, 2006, in the manner set out in the remedy section of this decision.

(b) Furnish the Union with the information it requested about the Unit Operations Councils and about the replacement of nurses who called out sick due to the mumps.

(c) Preserve and, on request, make available to the Region for examination and copying, all payroll records, personnel records and reports, and all other records necessary to analyze the amount of backpay due under this order.

(d) Within 14 days after service by the Region, post at its facilities in Dubuque, Cascade, and Elkader, Iowa, copies of the attached notice marked "Appendix."[27] Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 7, 2005.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. April 25, 2007.

_____
Ira Sandron
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

Service Employees International Union, Local 1999 (the Union) is the certified bargaining representative of employees described in our 2005–2006 collective-bargaining agreement with the Union (the agreement).

WE WILL NOT unilaterally discontinue paying you raises or other employee benefits contained in the agreement, without first giving the Union notice and an opportunity to bargain.

WE WILL NOT tell you that we will discontinue benefits contained in the agreement, when we have not given the Union notice and an opportunity to bargain.

WE WILL NOT tell you that you will not receive pay raises retroactively to June 21, 2006, when we unlawfully discontinued paying such raises on that date.

WE WILL NOT fail and refuse to timely provide the Union with information it requests that relates to our Unit Operations Councils or to nurses who have called out sick, or otherwise is relevant and necessary for the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT fail and refuse to offer to bargain an accommodation when we invoke confidentiality as a basis for not providing the Union with the names and contact information of coworkers whose complaints have been a basis for the discipline of an employee.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the National Labor Relations Act, as set forth at the top of this notice.

WE WILL restore the practice of giving you raises as set out in Article 20.3 of the 2005–2006 collective-bargaining agreement, as it was in effect on June 20, 2006, and WE WILL make you whole for any losses sustained as a result of the unlawful change we made on June 21, 2006.

WE WILL furnish the Union with the information it requested about the Unit Operations Councils and about the replacement of nurses who called out sick.

THE FINLEY HOSPITAL

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

300 Hamilton Boulevard, Suite 200, Peoria, Illinois 61602–1246,
Telephone (309) 671–7068.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE OFFICE'S COMPLIANCE OFFICER, (309) 671-7085.